

**REMARKS**

Claims 1 – 18 and 20 – 38 are pending with Claims 1 – 14, 22, 23, and 27 – 38 having been withdrawn from consideration. Thus, Claims 15 – 21 and 24 – 26 are currently under examination.

In the Office Action, the Examiner issued the following eight anticipation rejections:

<u>Reference</u>	<u>Inventor</u>	<u>Claims Allegedly Anticipated</u>
US 5,346,699	Tiernan, et al. ("Tiernan")	15 – 17, 19 – 21, 24, 26
US 6,368,529	Lloyd et al. ("Lloyd '529")	15, 17, 19, 20, 25, 26
US 6,423,251	Blount	15 – 20, 24 – 26
US 6,881,247	Batdorf	15
US 6,896,908	Lloyd et al. ("Lloyd '908")	15 – 17, 19, 20, 24 – 26
US 7,163,974	Manning et al. ("Manning")	15, 17, 19, 20, 25, 26
US 2007 / 0122442	Lloyd et al. ("Lloyd '442")	15 – 17, 19, 20, 24 – 26
JP 2001-220837	Tobin	15 – 17, 19 – 21, 24 – 26

In addition, Claims 15 – 20 and 24 – 26 were alternatively rejected as allegedly being obvious over the Blount patent. Claims 15 – 21 and 24 – 26 were also rejected as allegedly being obvious over the Tiernan patent in combination with the Lloyd '529 patent and the Blount patent.

Finally, Claims 15 – 17, 19, 20, and 24 – 26 are rejected for alleged obviousness-type double patenting based upon Claims 18 – 23 of the Lloyd '529 patent, Claims 1 – 18 of the Manning patent, and (provisionally) Claims 18 – 22 of application number 10/332,549.

Each of the foregoing rejections is respectfully traversed and favorable reconsideration is requested in view of the above amendments and following remarks.

I. The Anticipation Rejections

Once again, the Examiner contends that independent Claim 15, as well as certain claims which depend from Claim 15, is anticipated by the following references: (1) Tiernan, (2) Lloyd '529, (3) Blount, (4) Batdorf, (5) Lloyd '908, (6) Manning, (7) Lloyd '442, and (8) Tobain. It

is respectfully submitted that these rejections are not well taken, particularly in view of the present amendments to Claim 15.

As amended herein, Claim 15 is directed to a method for preventing termite damage to man-made structures. The method calls for, *inter alia*, obtaining a non-wood building component having an exposed surface which is susceptible to the formation of termite shelter tubes and coating the exposed surface of the non-wood building component with the borate solution to provide a surface concentration of borates on the exposed surface wherein the surface concentration of borates provides a termite barrier which is effective to prevent termites from forming tubes across the surface of the non-wood building component. By preventing termites from forming shelter tubes across the surface of the non-wood building component, wood building components situated above or otherwise adjacent to the non-wood building component are protected from termite which would otherwise use shelter tubing to traverse the non-wood building component and then attack the wood building component.

This is neither disclosed nor suggested in any of the eight references cited as allegedly being anticipatory. In fact, none of the eight aforementioned references even appears to recognize the problem of termite shelter tube formation. Certainly none of the eight cited references discloses or suggests coating an exposed surface of a non-wood building component, which is otherwise susceptible to the formation of termite shelter tubes, with a borate solution so as to provide a surface concentration of borates which act as a barrier coating and are effective to prevent termites from forming tubes across the surface of the non-wood building component. Consequently, none of the eight references can fairly be said to anticipate Claim 15 or any of its dependent claims.

## II. The Obviousness Rejections

In addition to the anticipation rejections, the Examiner also contends that Claims 15 – 20 and 24 – 26 are over the Blount patent. Claims 15 – 21 and 24 – 26 were also alleged to be obvious over the Tiernan patent in combination with the Lloyd '529 patent and the Blount patent.

As discussed above, however, none of these references even recognizes the problem of termite shelter tube formation and none of these references in any way discloses or suggests coating an exposed surface of a non-wood building component, which is otherwise susceptible

to the formation of termite shelter tubes, with a borate solution so as to provide a surface concentration of borates which act as a barrier to prevent termites from forming tubes across the surface of the non-wood building component, as called for in Claim 15. Accordingly, neither the Blount patent alone nor the Tiernan patent in combination with the Lloyd '529 patent and the Blount patent can be said to render the subject matter of Claim 15, nor any of its dependent claims, obvious.

### III. The Double Patenting Rejections

Finally, Claims 15 – 17, 19, 20, and 24 – 26 are further rejected for alleged obviousness-type double patenting based upon Claims 18 – 23 of the Lloyd '529 patent, Claims 1 – 18 of the Manning patent, and (provisionally) Claims 18 – 22 of application number 10/332,549.

With regard to the Manning patent and the Lloyd '529 patent, both Claims 1 – 18 of the Manning patent and Claims 18 – 23 of the Lloyd '529 patent are directed to methods for incorporating borates into composite product prior to the formation of the composite product. Neither Claims 1 – 18 of the Manning patent nor Claims 18 – 23 of the Lloyd '529 patent in any way suggests applying a borate solution surface coating to an already-formed non-wood building component as called for in the present claims. Nor do Claims 1 – 18 of the Manning patent or Claims 18 – 23 of the Lloyd '529 patent in any way suggest the use of such a surface coating to prevent the formation of termite shelter tubes across an exposed surface of a non-wood building component. Thus, it is respectfully submitted that the obviousness-type double patenting rejections based upon the Manning patent and the Lloyd '529 patent are improper and should be withdrawn.

As for the provisional double patenting rejection based upon application number 10/332,549, it is Applicants' understanding that no action is required at this time since no claims have currently been allowed in either the present case or the '549 application. Applicants intend to address the provisional double patenting rejection at such time when the claims in at least one of the two cases are otherwise in a condition for allowance.

Finally, formal drawings are being submitted together with this amendment in replacement of originally filed informal drawings Figs. 1 and 2.

Application No. 10/758,987  
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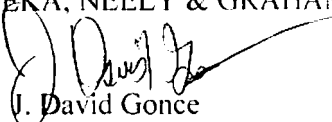
In light of the foregoing, Applicants urge the Examiner to reconsider the application, to withdraw the rejections, and to issue a notice of allowance at the earliest possible convenience.

In the event this response is not timely filed, Applicants hereby petition for the appropriate extension of time and request that the fee for the extension along with any other fees which may be due with respect to this paper be charged to our Deposit Account No. 12-2355.

Respectfully submitted.

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